

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 3685 OF 1994

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the
fair copy of the Order ?

4. Whether this case involves a substantial
question of law as to the interpretation of
the Constitution of India, 1950 of any Order
made thereunder?

5. Whether it is to be circulated to the Civil
Judge?

MAJ. P.K.BILWANI

VERSUS

THE UNION OF INDIA

Appearance:

MR TS NANAVATI for the Petitioner

None present for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 16/09/1999

#. Heard learned counsel for the petitioner and perused the Special Civil Application and affidavit in reply. The petitioner, by this petition under Article 226 of the Constitution praying for the following reliefs:

- (A) Issue a writ of Mandamus, a writ or order or direction in the nature of mandamus, directing the Respondent Authorities to continue the petitioner as a Commissioned Officer in the Territorial Army General Hospital (TA) B.J. Medical College till the usual age of retirement and further directing the respondent authorities not to insist on the resignation of the petitioner and further directing the respondent authorities not to de-commission the petitioner in the event he would not tender the unconditional resignation.
- (B) Pending admission and final disposal of this Special Civil Application, restrain the respondent authorities from de-commissioning the petitioner on his not tendering unconditional resignation and continue the petitioner on the strength of GH (TA) B.J. Medical College Ahmedabad.
- (C) Award cost of this petition to the petitioner.

#. It is not in dispute that the petitioner has resigned from the services of the Civil Hospital B.J. Medical College, Ahmedabad and joined as Honourary Professor of Plastic Surgeon in L.G. Municipal Hospital at Ahmedabad. I find sufficient merits in the reply of the respondents that the petitioner has made an attempt to misinterpret provisions of the Circular No.52160/GS/TA-3(a) dated 1/7/81 of the Territorial Army Directorate. The petitioner has not filed any rejoinder to the reply of the respondents. So, the facts stated in the reply affidavit stand uncontroverted.

#. From the reply, I find that the petitioner was commissioned in Territorial Army when he was serving in the hospital on which the General Hospital of the Territorial Army is raised. For Territorial Army there

is a provision that the officer must belong to the Civil Hospital on which the General Hospital of the Territorial Army is raised.

#. After leaving the services of the Civil Hospital and B.J. Medical College the petitioner is in no more in service of the Civil Hospital, Ahmedabad on which the General Hospital of Territorial Army is raised. The petitioner has ceased to be the Commissioned officer of the Territorial Army on the day he resigned from the services of the Civil Hospital. It is really shocking that a doctor of repute instead of voluntarily relinquishing the Territorial Army on his resignation from the services of Civil Hospital on which General Hospital of Territorial Army is raised is litigating. It is not the case of the petitioner that the doctors are not available in Civil Hospital on which General Hospital of Territorial Army is raised for the recruitment as Commissioned Officer in Territorial Army. The petitioner may have some emotional attachment but that will not create any right or justification to allow him to continue in the Territorial Army. I do not find any illegality in the action of the respondents and any merits in this claim of the petitioner. This writ petition is wholly misconceived, unwarranted and undesirable by a doctor. If he is really interested to serve as Commissioned Officer of Territorial Army what for he resigned from the services of Civil Hospital.

Taking into consideration the totality of the facts of this I do not find any merits in this Special Civil Application and the same is dismissed. Rule discharged. As nobody has put appearance for the respondents no order as to costs.

(S.K.Keshote, J.)

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